

---

In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division

In the matter of:	)	
	)	Chapter 7 Case
BRENDA B. WOODS	)	
	)	Number <u>96-41702</u>
<i>Debtor</i>	)	

**ORDER ON DEBTOR'S OBJECTION TO CLAIM OF**  
**J.E. SIMMONS**

In November of 1983, Debtor entered into a long term installment contract with J.E. Simmons for the purchase of two lots of land on which she placed her mobile home. The purchase price was \$14,000.00. On March 30, 1992, the parties replaced the land sales contract with a promissory note/debt deed arrangement. The promissory note was in the original principal amount of \$14,510.28 and provides for payments of \$140 per month, "until said indebtedness is paid in full," although a balloon provision also states that "all monies owed shall be due and payable by 3/1/2004."

The note further provides for a basic interest rate of 10%, a late payment rate of 12%, and a 15% rate if a default is declared. Shortly after signing the note, Debtor fell into arrears and Mr. Simmons began calculating Debtor's obligation by using the

applicable 12% interest rate. Sometime during early 1995, Debtor fell further into arrears and on March 30, 1995, Mr. Simmons accelerated the note thereafter charging a 15% rate pursuant to the terms of the contract. Mr. Simmons accepted fourteen payments from the Debtor after acceleration and before Debtor filed for bankruptcy on July 10, 1996.

The parties first dispute whether pursuant to Georgia law Mr. Simmons was entitled to charge interest-on-interest owed by the Debtor. Mr. Simmons concedes that he has charged interest-on-interest and both parties agree that Georgia law generally does not permit a creditor to charge interest-on-interest, unless specifically provided for in the contract. Debtor interprets the sales contract as not explicitly providing for interest-on-interest; however, Mr. Simmons contends that the terms of the contract allow him to do so.

Debtor also contends that Mr. Simmons should be limited to the 12% interest rate when calculating the remainder of his claim for the following two reasons. First, Debtor claims that Mr. Simmons failed to give adequate notice when accelerating the debt and, second, Debtor asserts that Mr. Simmons' receipt of fourteen post-default payments and booking them in the normal course, constitutes a de-acceleration of the interest rate such that Mr. Simmons again should be limited to the 12% delinquency rate and not the 15% default rate. Mr. Simmons disputes both contentions asserting that Debtor reasonably understood from the notice provided that the debt had been accelerated and that the acceptance of post-default payments does not constitute a de-acceleration of the debt.

## CONCLUSIONS OF LAW

In pertinent part, the promissory note provides as follows,

For value received, the undersigned . . . promise [sic] to pay to the order of J.E. Simmons . . . the sum of \$14,510.28 . . . . Said sum shall bear interest from 3/30/92 at the rate of ten percent (10%) per annum if payment is received before the 10th of the month, after the 10th of the month the interest shall be twelve percent (12%) of the then unpaid balance, computed from the last payment date and is due and payable in installments of \$140.00 per month . . .

In the event that any one of said installments shall be not be paid promptly when due, then, at the option of the holder, the entire indebtedness [sic] evidenced hereby and the remaining unpaid shall become due and payable at once and in full. Any past due indebtedness [sic] shall bear interest from maturity at fifteen percent (15%).

Georgia law generally prohibits calculation of interest on interest, but it recognizes an exception in the following circumstance:

On loans having first priority on real estate and on loans secured by the pledge or assignment of instruments evidencing loans having first priority on real estate, the parties written contract may lawfully agree that unpaid interest when due shall be added to the unpaid principal balance of the indebtedness and that the increased principal balance of the indebtedness bear interest pursuant to the terms of the contract . . .

O.C.G.A. § 7-4-17(1).<sup>1</sup> Mr. Simmons interprets the note as expressly providing for a calculation of interest on interest based on the following language:

. . . the interest shall be twelve percent (12%) of the then  
unpaid balance . . . .

Simmons contends that because the "balance" as defined by Black's Law Dictionary is "[t]he difference between the sum of the debit entries minus the sum of the credit entries," and because a "debit" is simply "[a] sum charged as due or owing," the note provides for a calculation of interest on interest. Although this interpretation is plausible, I hold that the contract provision is ambiguous because it is unclear whether the term "balance" is limited to "principal" or includes "interest." Contracts should be construed strictly against their drafters. *See Brooke v. Phillips Petroleum Co.*, 113 Ga.App. 742, 149 S.E.2d 511 (1966) (holding that in cases of doubt, the contract will be construed most strongly against the one who prepared the instrument). Accordingly, because Georgia law does not permit a calculation of interest on interest without evidence of an agreement permitting such, I hold that the claim of Mr. Simmons shall not include any interest charged on interest.

Debtor further objects to Mr. Simmons' charging of the default rate of fifteen percent (15%) after issuing notice of acceleration. Debtor claims that the notice was insufficient and that Mr. Simmons de-accelerated the note by accepting fourteen post-

---

<sup>1</sup> It is undisputed that Simmons holds the first priority lien on the real estate on which the Debtor's residence is located.

acceleration payments. Both contentions are overruled.

The notice of acceleration sent to the Debtor referred to a note signed by the Debtor "on or about March 10, 1992," in favor of Mr. Simmons in the principal amount of \$14,421.75. Debtor objects to the sufficiency of the notice because the note was signed on March 30, 1992, and in the principal amount of \$14,510.28. Debtor's objection is overruled because I hold that Mr. Simmons was in substantial compliance with the provisions of O.C.G.A. 13-1-11 and further that the notice provided did not mislead Debtor when only one note had been executed between the parties. *See Williams v. First Bank and Trust Co.*, 154 Ga.App. 879, 269 S.E.2d 923 (1980) (holding that substantial compliance with 13-1-11 is all that is required); *Aultman v. T.F.Taylor Fertilizer Works, Inc.*, 125 Ga.App. 398, 188 S.E.2d 157 (1972) (holding that notice was not defective for failure to state date of the note because there was only one note executed between the parties).

Debtor also contends that Mr. Simmons de-accelerated the note by accepting fourteen post-acceleration payments. While it is true that parties may imply a mutual departure from the terms of the original contract after acceleration, no evidence has been provided to support such a departure in this case. Mr. Simmons accepted fourteen post-acceleration payments. However, the post-acceleration acceptance of a partial payment of the entire debt does not nullify the acceleration of the debt or the maturity of the remainder of the indebtedness. *See Adamson v. Trust Co. Bank*, 155 Ga. App. 646

(1980). Moreover, the existence of a post-acceleration default rate of fifteen percent (15%) supports a finding that the parties intended to permit the post-acceleration acceptance of debt payments without effecting a departure from the original terms of the contract. Accordingly, Debtor's contention that Mr. Simmons de-accelerated his debt is overruled.

### O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Debtor's Objection to the claim of J.E. Simmons is sustained in part and overruled in part.

In accordance with this Order, Mr. Simmons' claim shall be recalculated and filed within twenty days from the entry of this Order. That claim will be deemed allowed, unless an objection is received within twenty days from the date of that submission.

---

Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of May, 1997.